

EXHIBIT G

GERSTMAN SCHWARTZ^{LLP}
ATTORNEYS AT LAW

June 26, 2020

VIA Certified Mail

Regional Director
Federal Bureau of Prisons
U.S. Custom House
200 Chestnut Street 7th Floor
Philadelphia, PA 19106
Attn: Administrative Remedy

**Re: Appeal from Denial of Request for Compassionate Release and Home
Confinement
Irving Stitsky - Inmate No. 573 090 53/ FCI Otisville**

Dear Regional Director,

Please be advised that the law firm of Gerstman Schwartz LLP represents the above referenced inmate. We submit this appeal in having received Warden Petrucci's (FCI Otisville) denial of Mr. Stitsky's petition for compassionate release and home confinement.

We appreciate BOP is deluged with requests for compassionate release as well as requests for alternative relief (i.e. the pandemic).

We therefore make this appeal as succinctly as possible in recognition of the broad discretion at your disposal to address the issues raised herein.

On April 13, 2020, this office submitted a petition for Compassionate Release and/or Home Confinement ("Petition") on behalf Mr. Stitsky to Warden Petrucci of FCI Otisville. Annexed hereto as *Exhibit A* is Mr. Stitsky's Petition.

On June 8, 2020 after submitting our request – Mr. Petrucci provided Mr. Stitsky with his denial of both Compassionate Release and Home Confinement (the "Denial"). Annexed hereto as *Exhibit B* is Warden Petrucci's Denial letter. Mr. Petrucci's denial letter would seem to be reflective of the volume of requests he has to contend with because it does not delineate with any particularity any substantive basis for denial and merely made conclusory allegations that Mr. Stitsky did not meet the required criteria.

Possibly Material Clerical Error:

As a further indication of the volume Mr. Petrucci is contending with, the denial letter has Mr. Stitsky listed under the wrong Inmate Register Number. *See Exhibit B*. As your records will

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reflect, Mr. Stitsky's Register No. is 57309-053. Unfortunately, the paper work evidently presented to Mr. Petrucci has Mr. Stitsky listed under Inmate Register No. 14996-074.

This clerical error may have had a substantive effect as the Register No. 14996-074 belongs to a 55-year-old inmate who does not evidently meet the threshold criteria for compassionate release. Insofar as Mr. Stitsky's denial could have been based on this erroneous information, we would be entirely remiss if we did not lodge an appeal in the hopes that this request be given a fresh look.

Medical Status:

On July 6, 2010, Mr. Stitsky was sentenced to a term of 85 years imprisonment for financial crimes. Mr. Stitsky is a 65-year-old non-violent offender and has already served over ten years of his sentence. As is often the case with a man his age, Mr. Stitsky's pre-existing health conditions have grown progressively worse in the past ten years during his incarceration. His age, diabetes, chronic kidney disease, high cholesterol, hyperglycemia, osteoarthritis, and high blood pressure - of course mark him as a prime candidate for not surviving the pandemic. Annexed hereto as *Exhibit C and D* are recent medical records from FCI Otisville and a psychiatric assessment of Mr. Stitsky, respectively.

While Mr. Stitsky acknowledges his role in his crimes it does warrant noting that a psychiatric assessment by Dr. Mills outlines a conversation he had with Mr. Shapiro, Mr. Stitsky's co-defendant, wherein *Mr. Shapiro expresses remorse and guilt for allowing Mr. Stitsky to be punished for the crime(s) he (Mr. Shapiro) committed*. Additionally, over the past several years Mr. Stitsky presents with all the tell-tale signs of Parkinson's disease or a similar syndrome. At times, he can be seen visibly shaking uncontrollably. His ability to properly function on a day-to-day basis has progressively diminished. Simple everyday tasks have become exceedingly difficult and Mr. Stitsky is now unfortunately often confined to his bunk.

Perhaps more to the point, as a practical matter given the state of his declining health, Mr. Stitsky can be expected to cost the BOP more and more with each passing year of his continued incarceration. That is unless he becomes yet another casualty of novel Corona Virus. Obviously, his survival rate is lower than average given his medical profile.

On a more positive note, if this petition for compassionate release is granted, Mr. Stitsky would live with his sister Ellen Stitsky Hogan at her home located at [REDACTED] Danbury, CT 06810 (845) 568-7702 Mr. Stitsky has an extensive support system made up of both family and longtime friends. Annexed hereto as *Exhibit E* are letters from family members/friends in support of Mr. Stitsky's release. Further, Mr. Stitsky's family will support him financially upon his return to society and assist him in retaining medical insurance and care for his sundry ailments

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so he will no longer be a burden on either the taxpayer or the BOP. They will of course also cover the cost associated with supervision.

No Risk of Recidivism:

Statistically speaking, it is well understood that the rate of recidivism for a non-violent offender like Mr. Stitsky, given his age, ailments, and family supports, are very low. He is no risk to the community at large and would therefore hope and pray, given the totality of circumstances, that this would make him an ideal candidate for early-supervised release.¹

Compassionate Release:

As noted, Mr. Stitsky is serving out his remaining 75-year sentence at FCI Otisville's medium security facility. Compassionate release is sought in accordance with Program Statement 5050.49, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C § 3582(c)(1)(A) and the U.S. Sentencing Guidelines, or in the alternative, temporary compassionate release to home confinement as a result of the unprecedented global pandemic that we are currently facing, due to Covid-19. According to § 1B1.13 – reduction in Term of Imprisonment Under 18 U.S.C. § 3582 (c)(1)(A) (Policy Statement), for Mr. Stitsky's purposes, the defendant; 1. must be experiencing deteriorating physical or mental health because of the aging process, 2. be 65 years old, and 3. must have served at least 10 years or 75 percent of his term of imprisonment, whichever is less.

Elderly Inmate with a Medical Condition:

This petition is also made in part pursuant to the Elderly Inmate with a Medical Condition category as discussed in § 4(b) of the Program Statement. According to § 4(b), the inmate must be 65 or older, suffer from a chronic or serious medical condition related to the aging process, and experience deteriorating mental or physical health that substantially diminishes their ability to function in a prison.

Mr. Stitsky meets the criteria for all aforementioned guidelines. Mr. Stitsky is 65 years old, and as previously discussed, suffers from type 2 diabetes, chronic kidney disease, high cholesterol, hyperglycemia, osteoarthritis, high blood pressure, and now Parkinson's disease. Pointedly, he acknowledges his guilt and has already paid dearly for his actions.

¹ In the alternative we would ask that he be considered for a commutation so he could continue with his sentence in Otisville's Camp. A reduction in sentence might allow for this and the more clement setting might eventually allow for other improvements.

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Rehabilitation Record:

During his incarceration, Mr. Stitsky has participated in a vast array of positive and rehabilitative programs including but not limited to; facilitating the Victim Impact Panel for over 9 years, facilitating parenting programs to teach younger inmates how to be good and effective parents, and participating in and facilitating meetings for *Toast*, a public speaking program in the prison. Annexed hereto as *Exhibit F* is Mr. Stitsky's most recent progress report, a recommendation letter from *then* Warden Recktenwald, and certifications for many of the programs he has facilitated and/or participated in. Mr. Stitsky is also currently assigned to the Safety Office Work Detail and has held this position since October 30, 2019.

By all accounts Mr. Stitsky has developed into a true mentor to younger inmates and has become a model inmate for the entire facility. Indeed, for the duration of his time in prison, Mr. Stitsky has been the proverbial model inmate.

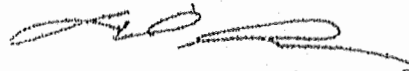
We urge you to consider this petition seeking supervised release for this non-violent offender who presents no risk to the community at large. Obviously, his continued presence in the relatively dense environment of a medium security facility puts him at greater risk of becoming yet another casualty of this raging pandemic.

In the alternative a commutation that would allow him to serve out his sentence at the Otisville Camp could also improve his prospective of surviving the pandemic.

Equally true, he meets all the criterion for compassionate release and is an ideal candidate for the reasons described above. Our office stands ready to provide any additional information you might require in order to make a determination.

Thank you in advance for considering this petition.

Respectfully Submitted,



David M. Schwartz, Esq.